*** THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY**

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+ WRIT PETITION NO : 12116 of 2002

% 14.09.2005

P. Prabhavathi, W/o Pandurangaiah

.. PETITIONER

VS.

$ The Election Tribunal-cum-Junior Civil Judge,

Jesdcharla Mandal, Mahabubnagar District

And another. ..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr.K. Mahipathi Rao

^ COUNSEL FOR THE RESPONDENTS: S. Bharat Kumar.

Head Note

>Citations:

(2003) 1 SCC 108.

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION NO.12116 OF 2002

Dated: 14.09.2005

Between:

P. Prabhavathi, W/o Pandurangaiah .. **Petitioner**

And

1. The Election Tribunal-cum-Junior Civil Judge,

Jedcharla Mandal, Mahabubnagar District and

Another .. **Respondents**

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THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITION NO.12116 OF 2002

ORDER:

This writ petition has been filed by the unsuccessful petitioner in O.P.No.3 of 2001 on the file of the Junior Civil Judge, Jedcharla, whereby the Election Petition filed by the petitioner ended in dismissal.

2. The petitioner and the 2nd respondent along with others namely Afzalunnisa Begum, G. Parvathamma, Razia Sulthana, G. Rama Devi and Laxmamma, contested for the post of Sarpanch of Gramapanchayat Kaverammapet (Jadcharla) in the election held on 17.8.2001. In the said election, K. Lalithamma-2nd respondent was declared elected by a margin of 14 votes. During the process of counting, the petitioner made a request for re-counting. The Election Officer recounted only the invalid votes and declared K. Lalithamma-2nd respondent as duly elected by a margin of 14 votes. The petitioner filed election petition contending that she sought for recounting of entire votes whereas the Election Officer recounted only invalid votes. Further allegation made in the election petition is that some votes polled in favour of the petitioner had been erroneously shown as having been polled in favour of the 2nd respondent when the electricity went off. The respondents filed counters resisting the election petition. Both the respondents took the stand before the election Tribunal that there were no irregularities either in conducting the election or in counting the votes polled and that no application was filed by the petitioner or any one of the contesting candidates for recounting before the Election Officer.

3. Before the Election Tribunal, the petitioner got herself examined as P.W.1 besides examining Nityanand as P.W.2 and got marked six documents as Exs.A1 to A6. The 2nd respondent besides examining herself as R.W.3, examined one Krishna Kumar as R.W.1, A Satyanarayana as R.W.2 and D. Srinivas as R.W.4 and got marked

Original Form No.17 as Ex.B.1. The learned Election Tribunal framed the following points for consideration:

i. Whether there was proper application for re-counting of votes at the relevant time by the petitioner or her counting agents?

ii. Whether there was recounting of votes?

iii. Whether the declaration of election of 2nd respondent to the office of Sarpanch of Grampanchayat, Kaverammapet (Jadcherla) is not proper and there were any irregularities during the entire election process?

iv. Whether there are sufficient grounds to order for recounting of votes as prayed for and whether the petitioner is entitled for the relief claimed by her?

4. On considering the evidence brought on record and on hearing the counsel for both the parties, the learned Election Tribunal held all the points against the petitioner and thereby, dismissed the petition by order, dated 28.3.2002. Hence, the writ petition by the unsuccessful petitioner in O.P.No.3 of 2001.

5. Learned Counsel appearing for the petitioner submits that the Election Tribunal went on wrong premise that the Tribunal has no jurisdiction to order for recounting. He further submits that total number of votes polled in favour of the contesting candidates and the invalid votes put together do not tally with the total number of votes polled and, therefore, it is a fit case to order for recounting of the votes polled. A further submission has been made by the learned Counsel for the petitioner that the petitioner requested for re-counting soon after completion of the counting, but the Election Officer ordered for recounting of only invalid votes instead of recounting the entire votes and thus, in the circumstances of the case, the Election Tribunal ought to have ordered for re-counting of the total number of votes polled.

6. Learned Counsel appearing for the 2nd respondent submits that R.W.1, who is Election Officer, has clarified the discrepancy as to certain corrections appearing on Ex.B-1-Original Form No.17. He laid much emphasis on the cross-examination of

R.W.1.

7. It is stated by R.W.1 in his cross-examination as follows:-

> "After counting of votes is concluded and after tallying the votes, form No.17 will be filled up. In the instant case also, the same method was followed. After verification of doubtful votes, there was variation in Ex.A3. As such corrections were made. Ex.B-1 was handed over to the Mandal Parishad Development Officer on the day of elections. It is true that in Ex.A-3, there is correction of figures pertaining to Auto symbol from 1218 to 1118. Even pertaining to symbol carromboard from 791 to 790 and similarly there is correction in the figures of invalid votes from 184 to 182. Likewise, there is a correction for the symbol of fluit. It is true as per Ex.A-3, the total number of votes polled is 6387 and in Ex.A-3 it is not written in letters for the corrected figures. At the time of returning the ballot boxes, I handed over Ex.B-1 to the MPDO. I have written the words for the corrected letters in Ex.B-1 before handing over the ballot boxes to MPDO. After obtaining signatures of the persons present, I have corrected Ex.B-1. As per Ex.B-1, the candidate of Auto rikshaw symbol has got 1168 and for carromboard 791 and rejected votes 182 and the total number of votes polled was 6385. It is true that in Ex.A-3, at page No.2, column Nos.8 and 9 were kept blank whereas in original Ex.B-1 they were filled up. It is true that in Ex.B-1 the total number of votes polled is corrected. It is not true to suggest that the corrections made in Ex.B-1 are just before filing the document before the Court only to cover up my lapses during counting of votes. My signature is visible in Ex.A-3."

8. It is no more in dispute that a request was made by the petitioner for recounting.The Election Officer ordered for re-counting of only invalid votes.The Election Tribunal went on the wrong premise that the Tribunal has no jurisdiction to order for

recounting unless a written requisition was submitted by the candidate before the Election Officer at the time of counting.

9. It is held by the Supreme Court in ***Sohan Lal Vs. Babu Gandhi and Others*** that after declaration of results, the Returning Officer has no power either to direct re-count or to change the results of the election. Once the result is declared, the only remedy for an aggrieved party is an election petition under section 122. In such a case, the Court or the Tribunal is bound to consider the plea and where a case is made out, it may direct recount depending upon the evidence led by the parties.

10. In the cited decision, the Supreme Court while considering the provisions of M.P. Panchayat Raj Adhiniyam, 1993 and M.P. Panchayat Raj Evam Gram Swaraj Rules held that the Election Tribunal has ample power to order for recounting of votes, if the petitioners made out sufficient grounds. The provisions of M.P. Panchayat Raj Adhiniyam, 1993 are all most similar to the provisions of A.P. Grampanchayat Act.

11. The Tribunal has ample power to direct for recount of the votes polled in case the petitioner has made out a ground for the same. Non-submission of a written representation before the Election Officer for recounting, does not act as fetter on the part of the Election Tribunal in exercising the power in justifiable cases to order for recounting.

12. R.W.1 admits in the cross-examination that number of votes registered in Ex.A3 does not tally with votes polled. I deem it appropriate to refer cross-examination of R.W.1 and it is thus:

> "Cross examination by the petitioner: The total number of votes polled are 6385. I cannot exactly say the number of votes polled for each contestant for the post of the Sarpanch without going through the records. It is true that the election agents have expressed their doubts as regards bundle of votes, consisting 50 votes. We have clarified the said doubt. A.C.M. means arrow cross mark. When there was no power supply we have lighted candle but we have not done anything. After power supply was restored, we have checked A.C.M. First we kept aside the doubtful votes. In the doubtful votes, on counting respondent No.2 got six more votes. The parties might have got more or less votes if the entire votes verified again. It is not true to suggest that the petitioner complained orally as well as in writing for recounting the votes but we have not recounted the votes. The petitioner orally asked for checking of A.C.M. Hence, it is verification of stamps, we have verified it. It is not true to suggest that when there was power failure, seven bundles of votes were mixed. It is not true to suggest that we have not

conducted the election properly and there were irregularities and only to defend myself I am deposing falsely. It is true that the totallying in Ex.A-3 is not tallying with the votes. In Ex.A-3 the symbols of the candidates were not showed by pictures but the symbols were described."

13. The evidence brought on record clearly establishes that there are discrepancies with regard to the votes polled in respect of the contesting candidates and the total number of votes. Therefore, it is a fit case to order for recounting of the votes.

14. In the result, this writ petition is allowed setting aside the order passed by the 1st respondent-Tribunal in O.P.No.3 of 2001 dated 28.3.2002 and the matter is remanded to the 1st respondent-Election Tribunal-cum-Junior Civil Judge, Jedcharla, to summon the ballot boxes; recount the votes in the presence of both the parties; declare the results and pass consequential orders. No order as to costs.

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Justice B. Seshasayana Reddy

Dated: 14.09.2005

Note:

L.R. copy to be marked

(B/O)

Nn.